

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

UNITED STATES OF AMERICA                     )  
   )  
   )       Criminal No. 01-455-A  
   )  
v.   )  
   )  
ZACARIAS MOUSSAOUI                         )

**MOTION AND MEMORANDUM TO HOLD HEARING *IN CAMERA* AND  
*EX PARTE*, IF NECESSARY, AND FOR AN EXTENSION OF THE DATE  
ON WHICH TO FILE PRETRIAL MOTIONS**

Counsel for the defendant are in receipt of the Court's order of June 6, 2002 setting a hearing for Thursday, June 13, 2002 on the defendant's various motions to dismiss court-appointed counsel and to proceed *pro se*. We respectfully move the Court for the following:

1. That the hearing be held *in camera*;
2. That to the extent the defendant is to be permitted or called upon to speak or to the extent attorney/client privileged information may be relevant and needs to be discussed, that such portions of the hearing be held *ex parte*; and
3. That the defense be given additional time (three (3) days if counsel, ten (10) days if Mr. Moussaoui) following the Court's decision on the motion to proceed *pro se* to file the Rule 12 motions that are currently scheduled to be filed by June 14, 2002.; and
4. That the Court keep open the option of hearing testimony on June 13, 2002 from defense retained mental health experts.

First, we request that the hearing be held *in camera* because of the likelihood that there will be open discussion of information concerning the mental health examinations which are currently under seal.

Second, we request that those portions of the hearing where attorney/client privileged information which is contained in the mental health evaluations are to be discussed, and any occasion when the defendant may be called upon to speak, be conducted *ex parte* as well. Mr. Moussaoui's demonstrated proclivity to make statements against his own interest should not provide a windfall to the government until mental competence status issues are resolved. Therefore, should Mr. Moussaoui be allowed or called upon to speak, it should be done *in camera* and *ex parte*.

Third, as this motion is prepared, it is unclear at this point who will be representing Mr. Moussaoui at the conclusion of the hearing. Rule 12 pre-trial criminal motions, which Mr. Moussaoui may or may not file if he represents himself, are due to be filed on June 14, 2002. Mr. Moussaoui should not be forced into accepting the strategic decisions of court-appointed counsel if he is ultimately going to be granted a request to proceed *pro se*. We respectfully request three (3) additional business days to file those motions after the *Faretta* issue is resolved if we remain as counsel, and ten (10) additional days for Mr. Moussaoui to prepare and file his own motions if he is to be allowed to proceed *pro se*.

Finally, we request that we be allowed to call defense experts at the hearing if we conclude that it is necessary in order to respond to Dr. Patterson's most recent report.

Respectfully submitted,

ZACARIAS MOUSSAOUI  
By Counsel

\_\_\_\_\_/S/  
Frank W. Dunham, Jr.  
Federal Public Defender  
Eastern District of Virginia  
1650 King Street, Suite 500  
Alexandria, VA 22314  
(703) 600-0808

\_\_\_\_\_/S/  
Edward B. MacMahon, Jr.  
107 East Washington Street  
P.O. Box 903  
Middleburg, VA 20117  
(540) 687-3902

\_\_\_\_\_/S/  
Gerald T. Zerk  
Assistant Federal Public Defender  
Eastern District of Virginia  
830 E. Main Street, Suite 1100  
Richmond, VA 23219  
(804) 565-0880

\_\_\_\_\_/S/  
Judy Clarke  
Federal Defenders of  
Eastern Washington and Idaho  
10 N. Post, Suite 700  
Spokane, WA 99201  
(703) 600-0855

#### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion and Memorandum to Hold Hearing *in Camera* and *Ex Parte*, if Necessary, and for an Extension of the Date on Which to File Pretrial Motions was served by hand upon AUSA Robert A. Spencer, AUSA David J. Novak, and AUSA Kenneth M. Karas, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, Virginia 22314 this 7th day of June, 2002.

\_\_\_\_\_/S/  
Frank W. Dunham, Jr.